

demands for property loss or damage are under the authority of the FCCA.

(b) *Documentation of damages.* MTFs are required by AR 40-400, Patient Administration, chapter 13 to furnish complete billing documents to RJAs.

(1) TRICARE bills are obtained from the fiscal intermediary servicing the ACO. The amounts are based on the amount TRICARE pays and not the amount the patient is billed by the provider. TRICARE bills must be screened to insure that the care is incident or accident related as the demand is limited to that amount.

(2) MTF bills, both outpatient and inpatient, are obtained from either the MTF co-located with the ACO or if another MTF is involved, from that MTF, regardless of uniformed service affiliation. Outpatient bills include not only the cost of the visit but also the cost of each procedure, such as x-rays or laboratory tests. Inpatient billing is not based on services rendered but on a diagnostic group. Charges for professional inpatient services will be itemized the same as outpatient care. Charges for prescription services will be included. Screening to ensure that only incident or accident related care is claimed is essential. The cost of ambulance services, ground or air, will be calculated with MTF assistance and demanded. Burial expenses are obtained from the local mortuary affairs office on DD Form 2063, but will be demanded only when the insurance coverage includes such expenses.

(3) Lost pay will be obtained from the leave or earnings statement or the active duty pay chart for the year or years in question and will include special and incentive pay unless the injured service member did not receive either due to the length of time off assigned duty. The time off duty will be based on the time service members are unable to perform duties for which they have been trained (their military occupational specialty). It will not be limited to inpatient time. Time in a medical holding or convalescent leave will be lost time.

(4) The amount recoverable for personal property losses is limited to its value at the time of loss. Depreciation charts may be used to determine the reduction from the value at purchase.

Replacement value will not be used. Both real and personal property damage will be on the value of labor and cost of material including the use of heavy equipment. When the cost of repairs is greater than \$50,000, 10% overhead will be added. This can be substantiated using case law and by seeking documentation from the repair facility.

(c) *Double collections prohibited.* When the cost of medical care is recoverable by the MTF from medical care insurance, both primary and supplemental under 10 U.S.C. 1095, an assertion under FMCRA will be made, including a demand for lost pay not recoverable out of health insurance. While the United States is entitled to recover costs of medical care from both the injured parties' medical insurance and from the third-party tortfeasor, USARCS policy is not to collect twice. RJAs will carefully coordinate with the MTF to insure that double collection does not occur. Demand for lost pay should be enforced as it is not recoverable from medical care insurance.

#### § 537.10 Recovery procedures.

(a) Recovery personnel have three means of enforcing recovery following initial assertion.

(1) Referral to litigation pursuant to § 537.11;

(2) The head of an ACO should request Chief, Litigation Division, OTJAG to have the RJA appointed as a Special Assistant United States Attorney when the following criteria are met:

(i) Filing suit is a frequent necessity, e.g., insurance companies are refusing payment on small claims either by raising issues well settled or by regularly reducing the amount of medical care as not fair and reasonable;

(ii) The local U.S. Attorney's office is in favor of such appointment due to his previous experience with the RJA and the additional burden of affirmative claims litigation on his staff;

(iii) The RJA has at least two years experience and is likely to continue in the RJA assignment for at least one year; and

(iv) Commander USARCS concurs in the appointment and is willing to furnish support.

(3) The RJA may request that the attorney representing the injured party include the amount asserted by the United States as part of special damages. The injured party's attorney may not represent the United States nor may the United States pay attorney fees as this would be in violation of 5 U.S.C. 3106. Where indicated, this arrangement should be reduced to writing. Be mindful that the attorney's duty to the injured party is in conflict with the interests of the United States where the amount potentially recoverable is small in comparison to the amount asserted by the United States. In this event the RJA should pursue recovery independently.

(b) Careful monitoring of all assertions is required to insure timely follow-up resulting in collection or suit where indicated. Installation of a suspense system to avoid the expiration of the statute of limitations is essential. Recommendations to file suit should be forwarded by the RJA well prior to the expiration of the statute of limitations. Within six months prior to the running of the statute of limitations, USARCS must be notified of the status of the claim or potential claim. Follow-up demands should precede filing suit to create a written record of efforts to avoid suit. Personal contact with all parties is encouraged. When represented, contact the representative.

(c) Sources other than vehicle liability coverage should be exhausted in cases where the amount of the potential recovery exceeds \$50,000 and the coverage is small. Coordination with USARCS is required. USARCS can obtain expert witnesses for medical malpractice cases, product liability cases, or other cases in which another tortfeasor may be involved.

#### § 537.11 Litigation.

(a) If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the government's interests

are not adequately represented on a claim over \$25,000.

(b) RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases.

(c) In order to directly initiate or intervene in litigation, an RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27-40, chapter 5), to the U.S. Attorney. While the RJA or recovery attorney, in conjunction with the Litigation Division Torts Branch, should attempt to have the U.S. Attorney's Office initiate litigation at least six months before the expiration of the statute of limitations (SOL), the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the government's interest in litigation without any special coordination.

#### § 537.12 Settlement authority.

(a) *Assertions for \$50,000 or less—(1) Approval authority.* An RJA or civilian recovery attorney, if delegated authority by his or her ACO or CPO, may compromise a collection on a claim asserted for \$50,000 or less, unless recovery action is reserved by a command claims service.

(2) *Final action authority.* (i) An ACO, or CPO if delegated authority by its ACO, may terminate collection action on a claim asserted for \$50,000 or less, unless action is reserved by a command claims service.

(ii) The foregoing authorities may waive a claim asserted for \$50,000 or less where undue hardship exists.

(iii) *Determination of amount.* The amount of \$50,000 is determined totaling the amounts for medical care, lost military wages, lost earnings or government property damage arising from the same claims incident.

(b) *Assertions over \$50,000.* USARCS retains final authority over assertions over \$50,000. By use of the mirror file